

SUTHERLAND

999 Peachtree Street, NE
Atlanta, GA 30309-3996
404.853.8000 Fax 404.853.8806
www.sutherland.com

ATLANTA
AUSTIN
HOUSTON
NEW YORK
TALLAHASSEE
WASHINGTON DC

Eric S. Tresh
DIRECT LINE: 404.853.8579
E-mail: eric.tresh@sutherland.com

Received & Inspected

APR - 1 2009

FCC Mail Room

March 31, 2009

VIA OVERNIGHT MAIL

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

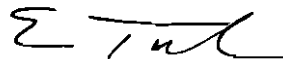
Re: *i-wireless, LLC - Petition for Forbearance*
CC Docket No. 96-45

Dear Ms. Dortch:

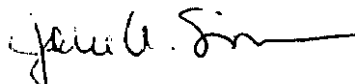
Please find enclosed one (1) original and four (4) copies of i-wireless, LLC's Petition for Forbearance, plus an additional copy of the Petition's first page. Please file-stamp the first page and return it to me in the enclosed self-addressed stamped envelope.

Please contact me if you have any questions. Thank you for your assistance in this matter.

Sincerely,



Eric S. Tresh



Jolie A. Sims

Enclosures

cc: Pat McDonough

No. of Copies rec'd 044
List ABCDE

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

Received & Inspected
APR - 1 2009
FCC Mail Room

)
)
In the Matter of)

)
Federal-State Joint Board on)
Universal Service)
)
_____)

CC Docket No. 96-45

**PETITION FOR FORBEARANCE OF
I-WIRELESS, LLC**

Eric S. Tresh
Jolie A. Sims

SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street NE
Atlanta, GA 30309
(404) 853-8579

Attorneys for i-wireless, LLC

March 31, 2009

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>BACKGROUND</u>	2
	A. <u>i-wireless Overview</u>	2
	B. <u>Lifeline/Link-Up Program</u>	3
	C. <u>Forbearance Standard</u>	5
	D. <u>TracFone and Virgin Mobile’s Petitions for Forbearance</u>	6
III.	<u>ANALYSIS</u>	8
	A. <u>Enforcement of Section 214(e)(1)(A) Is Not Necessary to Ensure that i-wireless’ Rates Are Just and Reasonable and Non-Discriminatory</u>	8
	B. <u>Enforcement of Section 214(e)(1)(A) Is Not Necessary to Protect Consumers</u>	9
	C. <u>Forbearance Is in the Public Interest</u>	11
IV.	<u>REQUEST FOR EXPEDITED TREATMENT</u>	13
V.	<u>CONCLUSION</u>	15

SUMMARY

i-wireless, LLC (“i-wireless”), a reseller of commercial mobile radio services (“CMRS”), is seeking forbearance from the facilities requirement under section 214(e)(1)(A) of the Communications Act of 1934, as amended (the “Act”). Section 214(e)(1)(A) of the Act provides that a common carrier designated as an eligible telecommunications carrier (“ETC”) must offer services supported by the federal Universal Service Fund (“USF”) using either its own facilities, or a combination of its own facilities and to resale of another carrier’s services. i-wireless requests forbearance from the facilities-based requirements under section 214(e)(1)(A) of the Act for ETC designation to receive Lifeline and Link-Up support. Moreover, i-wireless is concurrently applying for ETC designation solely to receive support under the Low Income program in other states.

Section 10 of the Act empowers the Federal Communications Commission (the “FCC” or “Commission”) to forbear from enforcing any regulation or provision to a telecommunications carrier or service, such as enforcement of the facilities requirement, if the Commission determines that three conditions are present. First, the Act requires i-wireless’ rates to be just, reasonable and non-discriminatory. i-wireless competes against numerous other wireless carriers, prepaid and postpaid providers, and other wireless companies that resell wireless services. This competition ensures that i-wireless offers consumers high-quality services at competitive rates and that are just, reasonable, and non-discriminatory.

Second, enforcement of the facilities-based requirement for i-wireless is not necessary to protect consumers. i-wireless will provide significant benefits to consumers, especially low-income consumers, by offering them alternatives for affordable wireless telecommunications services. Forbearance from the facilities requirement will therefore advance the Commission’s

goal under the USF by providing low-income consumers with enhanced access to telecommunications services at affordable rates.

Third, forbearance is in the public interest since i-wireless will be permitted to provide discounted telecommunications services to qualifying low-income customers, the intended beneficiaries of the Lifeline and Link-Up programs. Many low-income consumers have difficulty obtaining access to an affordable service plan due to their inability to enter into a long-term contract. i-wireless' prepaid service offerings are ideally suited to provide these customers with simple, reliable, cost-effective and affordable wireless services. Grant of forbearance, therefore, will enable i-wireless to expand the availability of affordable telecommunications services to consumers who otherwise cannot afford telecommunications service.

Finally, i-wireless' request for forbearance is consistent with prior decisions in which the Commission granted forbearance to TracFone Wireless, Inc. ("TracFone") and Virgin Mobile USA, L.P. ("Virgin Mobile"), both of which are also non-facilities based wireless companies that resell CMRS services. The Commission granted TracFone's forbearance request in 2005 and recently granted Virgin Mobile's request in March 2009. The Commission concluded in both that the facilities-based requirement impedes more low-income consumers from benefiting under the USF's Low Income program, and forbearance of this requirement will increase the availability of prepaid wireless services that would significantly benefit low-income consumers who are especially concerned about costs, high usage charges and long-term contracts. For similar reasons, the Commission's grant of forbearance to i-wireless from enforcement of section 214(e)(1)(A) will benefit consumers, thereby furthering the Commission's goal of universal service.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

)
)
In the Matter of)
)

CC Docket No. 96-45

Federal-State Joint Board on)
Universal Service)
)
_____)

PETITION FOR FORBEARANCE

I. INTRODUCTION

i-wireless, LLC (“i-wireless”), pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),¹ hereby petitions the Federal Communications Commission (the “FCC” or “Commission”) to forbear from applying the requirement under section 214(e) of the Act that a common carrier designated as an eligible telecommunications carrier (“ETC”) must offer services administered by the Federal Universal Service Fund (“USF”) over its own facilities, or a combination of its own facilities and resale of another carrier’s services.² As described below, i-wireless’ request for forbearance from the facilities requirement under section 214(e) satisfies the requirements of Section 10(a) of the Act and is consistent with two decisions rendered by the Commission, granting TracFone Wireless, Inc. (“TracFone”) and Virgin Mobile USA, L.P. (“Virgin Mobile”) – both wireless resellers – forbearance from the facilities

¹ 47 U.S.C. § 160.

² 47 U.S.C. § 214(e)(1)(A).

requirements under section 214(e) solely to participate in the USF's Low Income Program.³ As discussed below, grant of forbearance would permit i-wireless to offer discounted telecommunications services that would benefit low-income consumers.

II. BACKGROUND

A. i-wireless Overview

i-wireless provides prepaid wireless telecommunications services to consumers by using the Sprint PCS network as the wireless backbone to provide nationwide service. Sprint Nextel is a nationwide facility-based carrier that provides wholesale capacity on its PCS wireless network ("Sprint PCS") to wireless resellers like i-wireless. Sprint PCS provides i-wireless with the network infrastructure and wireless transmission facilities, allowing i-wireless to operate as a Mobile Virtual Network Operator ("MVNO"), as both TracFone and Virgin Mobile operate. As an MVNO, i-wireless purchases wireless services from Sprint PCS on a wholesale basis for calling and text messaging, resells wireless services to customers using its own brand, and manages and markets all aspects of the wireless services to customers, including service plans, pricing, website, handset selection, mobile applications, marketing materials and customer service. i-wireless offers consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets and high-quality customer service.

Many i-wireless customers are from lower-income backgrounds and did not previously enjoy access to wireless service because of economic constraints, poor credit history, sporadic

³ *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.C.S. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005); *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.C.S. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, FCC 09-18, 47 Comm. Reg. (P&F) 436 (rel. March 5, 2009) (Collectively, the "Forbearance Orders" unless specifically referring to TracFone, then "TracFone Forbearance Order," or Virgin Mobile, then "Virgin Mobile Forbearance Order."). References from the *Virgin Mobile Forbearance Order* will be cited as "FCC 09-18" and the paragraph number.

employment or inability to enter into a long-term contract. i-wireless estimates that approximately thirty-four (34) percent of its present customers are new to wireless services and sixty-one (61) percent have an annual household income below \$ 40,000.⁴ i-wireless does not conduct credit checks or require customers to enter into long-term service contracts as a prerequisite to obtaining wireless service. Further, customers may choose a prepaid plan in which they are charged only for the minutes they use and can spend as little as \$10 per month on wireless service. Moreover, i-wireless has an affiliation with Kroger grocery stores, thereby making the i-wireless products available to all Kroger customers. This affiliation provides a further incentive for i-wireless to provide quality customer service, as negative customer experiences could jeopardize its affiliation with Kroger. i-wireless' customer service qualitative metrics are amongst the best in the industry.

Prepaid wireless services that are affordable and easy-to-use are attractive to lower-income customers or lower volume consumers, providing them with access to emergency services, and a reliable means of communication while traveling and for contacting prospective employers. By providing affordable wireless plans and quality customer service to consumers who are otherwise unable to afford them, or were previously ignored by traditional carriers, i-wireless has expanded the availability of wireless services to many more consumers, which is the principal reason that Congress created the USF. Indeed, many of i-wireless' customers are among those that the USF was designed to benefit.

B. Lifeline/Link-Up Program

Congress and the Commission recognized that universal telecommunications service provides consumers with access to emergency services, government services and surrounding

⁴ These statistics were taken from third party market research conducted on i-wireless' subscriber base.

communities. Therefore, universal service to all consumers, including low-income consumers, has been a fundamental goal since the Act was adopted in 1934, but Congress and the Commission increased their efforts by amending the Act in 1996⁵ to establish support mechanisms necessary to advance the delivery of affordable telecommunications service to everyone, especially low-income consumers.⁶ Section 254(b) sets forth the principles upon which the Commission bases its policies for the advancement of universal service. Section 254(b)(3) requires the Commission to ensure that all consumers, including low-income consumers, have access to quality telecommunications services that are reasonably comparable to those services provided, and reasonably comparable to rates charged for similar services, in urban areas. In order to accomplish the objectives set forth in section 254, the Commission established the USF, in which all telecommunications service providers and other providers of telecommunications contribute to the fund based on a percentage of the telecommunications revenues they receive. The contributions placed in the USF are administered by the Universal Service Administration Company (“USAC”) and support four different programs: Low Income, High-Cost, Schools and Libraries, and Rural Health Care programs. The Low Income program was designed to assist low-income individuals obtain quality telecommunications services through the Lifeline and Link-Up programs.⁷ Lifeline support helps pay the monthly costs of telecommunications services for lower-income consumers by providing them with discounts of up to \$10 off the monthly cost of telephone service, with additional discounts available for

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ 47 U.S.C. § 254.

⁷ 47 C.F.R. §§ 54.401 and 54.411.

individuals living on tribal lands.⁸ Link-Up provides qualifying low-income consumers with discounts for initial activation costs.⁹

The Act provides that only an ETC shall be eligible to receive funding from the USF, including the Low Income program containing the Lifeline and Link-Up programs.¹⁰ Section 214(e)(1)(A) of the Act provides that a carrier designated as an ETC shall offer the services supported by the USF, such as the Lifeline support services, by using either its own facilities, or a combination of its own facilities and resale of another carrier's services. The Commission initially concluded in 1997 that pure resellers could not be designated as ETCs since these entities purchase from facilities-based providers minutes and services at a price that already reflects the universal service support payment.¹¹ Moreover, the Commission ruled in the *Forbearance Orders* that the 1997 *Universal Service Order* did not apply where a pure wireless reseller was providing Lifeline support only.¹²

C. **Forbearance Standard**

Section 10(a) of the Act provides that the Commission forbear from applying any regulation or any provision of the Act to any telecommunications carrier if the Commission determines that:

⁸ 47 C.F.R. §§ 54.400 and 54.401.

⁹ 47 C.F.R. § 54.411(a)(1).

¹⁰ 47 U.S.C. § 214(e)(1)(A).

¹¹ *Universal Service First Report and Order* (adopting the Federal-State Joint Board on Universal Service's analysis and conclusion) ("1997 *Universal Service Order*"), CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8866, para. 161 and 8875, para. 178 (1997); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-173, paras. 160-161 (1996).

¹² *Id.* at 8876.

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹³

Forbearance is appropriate when all three factors of the test are satisfied.

D. TracFone and Virgin Mobile's Petitions for Forbearance

The Commission has granted two petitions submitted by wireless resellers seeking forbearance from the ETC facilities requirement under section 214(e)(1)(A) of the Act. The Commission granted TracFone's request for forbearance from the facilities-based requirement in 2005, and Virgin Mobile's request in 2009. Like i-wireless, TracFone and Virgin Mobile are MVNOs that provide nationwide prepaid wireless services. The Commission considered the statutory goals of universal service in the context of low-income consumers¹⁴ and the statutory purpose behind the facilities requirement as it relates to carriers qualifying for federal low-income universal service support.¹⁵ After careful examination of the regulatory goals of universal service as applied to low-income consumers, the Commission concluded that each company satisfied the three requirements necessary for a grant of forbearance.

Just and Reasonable. With respect to the first prong of the section 10(a) analysis, the Commission concluded in the *Forbearance Orders* that fulfillment of the facilities requirement is

¹³ 47 U.S.C. § 160(a).

¹⁴ 47 U.S.C. § 254(b)(3).

¹⁵ 47 U.S.C. § 214(e).

not necessary to ensure that charges, practices, and classifications remain just and reasonable and non-discriminatory when that provider seeks ETC designation solely for the purpose of providing Lifeline-supported services.¹⁶ The Commission distinguished the *Forbearance Orders* from its prior decision in the *1997 Universal Service First Order*, in which pure wireless resellers were denied ETC designation,¹⁷ and ruled that providing only Lifeline support directly to TracFone and Virgin Mobile would not result in double recovery.¹⁸

Consumer Protection. The Commission also determined in the *Forbearance Orders* that imposing a facilities-based requirement for a pure wireless reseller seeking ETC designation solely for Lifeline support was not necessary to protect consumers. Instead, the Commission concluded that forbearance from the facilities requirement would actually benefit consumers since a prepaid wireless provider could offer Lifeline-eligible consumers a choice of providers for telecommunications services not otherwise available to low-income consumers.¹⁹

Public Interest. Finally, the Commission concluded in the *Forbearance Orders* that both wireless companies satisfied the third component that forbearance from the facilities requirement would serve the public interest by raising awareness of the Low Income program and expanding participation of eligible consumers, since only about one-third of eligible households are participating.²⁰

¹⁶ *TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 14; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 20.

¹⁷ *1997 Universal Service Order*, 12 FCC Rcd at 8866, para. 161 and 8875, para. 178.

¹⁸ *TracFone Forbearance Order*, 20 FCC Rcd at 15100, para. 9; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 15.

¹⁹ *TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 15; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 21.

²⁰ *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, para. 1 and Appendix K at Table 1.B (2004).

III. ANALYSIS

A. Enforcement of Section 214(e)(1)(A) Is Not Necessary to Ensure that i-wireless' Rates Are Just and Reasonable and Non-Discriminatory

Section 10(a)(1) of the Act directs the Commission first to determine whether enforcement of the facilities-based requirement of section 214(e) for a wireless reseller is necessary to ensure that the “charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.”²¹ Given the extremely competitive state of the wireless industry, enforcement of section 214(e)(1)(A) is unnecessary to ensure that i-wireless’ rates are just and reasonable. The Commission concluded in the 2005 *TracFone Forbearance Order* that the vigorous competition in the wireless market would “ensure[] that [TracFone’s] rates are just and reasonable and not unjustly or unreasonably discriminatory,”²² and again in the 2009 *Virgin Mobile Forbearance Order* that “Virgin Mobile, as a reseller, is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.”²³ The Commission noted in the *Forbearance Orders* that competition spurs innovation amongst carriers in their offerings, expanding the choice of available products for eligible consumers.²⁴

i-wireless recently entered the wireless market in 2006, and has a total of approximately 125,000 customers. i-wireless competes against numerous other wireless carriers, including

²¹ 47 U.S.C. § 160(a)(1).

²² *TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 14; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 20.

²³ *Virgin Mobile Forbearance Order*, FCC 09-18, para. 19.

²⁴ *Id.*

prepaid and postpaid providers, nationwide carriers, facilities-based providers, and MVNOs that resell wireless services. Wireless companies continually differentiate their services and rates from the many other wireless providers in an effort to gain market share. As a relatively new and small wireless company, i-wireless is attempting to penetrate the competitive wireless market by offering competitive rates and services. i-wireless offers simple and affordable plans, emphasizes quality customer service, and does not require a credit check or long-term contractual commitment. Additionally, customers may switch to another wireless provider at any time. i-wireless, as a reseller, is by definition subject to competition in the large wireless market that ensures its rates and services are comparable to its competitors. Thus, as it ruled in the *Forbearance Orders*, the Commission should also find that the existence of this robust competition will ensure that enforcement of section 214(e)(1)(A) is unnecessary to ensure that i-wireless provides its services at rates that are just and reasonable and not discriminatory.

B. Enforcement of Section 214(e)(1)(A) Is Not Necessary to Protect Consumers

Section 10(a)(2) of the Act requires a finding that application of the facilities-based requirement to i-wireless is not necessary to protect consumers. i-wireless' request for forbearance must be examined in light of the Act's primary goal of providing affordable and comparable telecommunications services to all consumers, especially low-income consumers. As the Commission found in the *Forbearance Orders*, the grant of forbearance to allow participation in the Low Income program would benefit low-income consumers since TracFone and Virgin Mobile would offer eligible consumers a choice of providers for accessing telecommunications services not available to such consumers today.²⁵ Thus, if i-wireless is

²⁵ *TracFone Forbearance Order*, 20 FCC Rcd at 15101; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 21.

ultimately granted forbearance and limited ETC status, low-income consumers would benefit since they would receive additional choices for accessing telecommunications services not currently available and affordable telecommunications services tailored to their needs.

i-wireless' request also will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. In response to opponents' comments and concerns about the funding available to other ETCs, the Commission ruled that granting TracFone and Virgin Mobile ETC designation for Lifeline-only services would not "significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations."²⁶

The Commission has recognized the potential growth of the USF associated with High-Cost support distributed to competitive ETCs.²⁷ However, like TracFone and Virgin Mobile, i-wireless will only seeks eligibility for the Low Income program, not the High-Cost program. In 2007, support from the Low Income program accounted for only 11.8 percent of the distribution of the total universal service fund; whereas, High-Cost support accounted for 61.06 percent.²⁸ Thus, the Commission concluded that "any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program,

²⁶ *TracFone Forbearance Order*, 20 FCC Rcd at 15103; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 24.

²⁷ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1577, para. 31 (2004); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6433-4, para. 25 (2004); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8837-38, paras. 6-7 (2008).

²⁸ *Trends in Telephone Service*, Wireline Competition Bureau, Federal Communications Commission, Table 19.1 and Chart 19.1 (Aug. 2008). As of March 2007, the average monthly federal support per non-tribal Lifeline customer was \$8.57. *Id.* at Table 19.7. 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25 per month in Lifeline support. 47 C.F.R. § 54.403(a)(4).

furthering the statutory goal of providing access to low-income consumers.”²⁹ If i-wireless is ultimately granted ETC designation to receive funding under the Low Income program, USF’s costs or expenditures will not increase in any meaningful way, and instead many low-income customers who do not currently participate in the Lifeline and Link-Up programs will benefit. Moreover, granting i-wireless’ Forbearance Petition will not have any effect on the number of person eligible for Lifeline and Link-Up support.

C. Forbearance Is in the Public Interest

Finally, section 10(a)(3) requires the Commission to determine whether enforcement of the facilities requirement for a wireless reseller that seeks ETC designation for Lifeline/Link-Up support is in the public interest.³⁰ As was previously stated, the Act was amended in 1996 to provide competitive rates and higher-quality telecommunications services for all consumers and encourage the rapid deployment of new telecommunications services regardless of geographic location or income.

The Commission stated in the *Forbearance Orders* that the statutory goal of providing access to affordable telecommunications services to low-income consumers outweighs the requirement that a reseller maintains its own facilities, where the wireless reseller will be eligible for Lifeline support only. Thus, the Commission should also find that requiring i-wireless, as a wireless reseller, to own facilities does not further the statutory goals of the Low Income program, which is to provide support to qualifying low-income consumers, regardless of where they live.

²⁹ *Virgin Mobile Forbearance Order*, FCC 09-18, para. 24.

³⁰ 47 U.S.C. § 160.

The Lifeline/Link-Up program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.³¹ Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.³² As noted in the *Forbearance Orders*, the Commission expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.³³ In granting forbearance to Virgin Mobile, the Commission stated: “We believe even more can be done to further expand participation by those subscribers that qualify and thus further the statutory goal of section 254(b).”³⁴

The Commission stated that enforcing the facilities requirement, however, would not further expand participation by eligible consumers. The facilities requirement would “impede[] greater utilization of Lifeline-supported services provided by a pure wireless reseller.”³⁵ i-wireless, like TracFone and Virgin Mobile, offers consumers a variety of prepaid wireless services that would be beneficial to low-income consumers “who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts.”³⁶ Therefore, granting i-wireless forbearance from the section 214(e)(1)(A) facilities requirement will further the Commission’s goal of expanding the availability of affordable telecommunications services to these consumers through the underutilized Low Income support

³¹ 47 C.F.R. §§ 54.401 and 54.411.

³² *Lifeline and Link-Up*, 19 FCC Rcd at 8305, para. 1 and Appendix K at Table 1.B.

³³ *TracFone Forbearance Order*, 20 FCC Rcd at 8305, para. 1; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 30.

³⁴ *Virgin Mobile Forbearance Order*, FCC 09-18, para. 30.

³⁵ *TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 9; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 15.

³⁶ *TracFone Forbearance Order*, 20 FCC Rcd at 15100, para. 9; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 15.

program, in turn promoting competition among providers of telecommunications services and leading to lower prices and increased choices for low-income consumers.

Finally, i-wireless will comply with all the conditions imposed upon TracFone and Virgin Mobile. Specifically, i-wireless will: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where i-wireless will provide Lifeline service confirming that i-wireless provides its customers with 911 and E911 access (or self-certify compliance if, within 90 days of i-wireless' request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that i-wireless does not provide its customers with access to 911 and E911 service within the PSAP's service area;³⁷ (e) require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from i-wireless; and (f) establish safeguards to prevent its customers from receiving multiple i-wireless Lifeline subsidies at the same address.³⁸

IV. REQUEST FOR EXPEDITED TREATMENT

i-wireless respectfully requests that the Commission expedite this petition for forbearance. The Commission has credited the Lifeline program with a show of increasing

³⁷ *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, FCC 09-16 (rel. Mar. 5, 2009).

³⁸ *TracFone Forbearance Order*, 20 FCC Rcd at 15098-99, para. 6; *Virgin Mobile Forbearance Order*, FCC 09-18, para. 12.

subscription rate to telephone service among low-income consumers, but also acknowledged that the Lifeline-support program has been underutilized, and therefore not enough low-income consumers have benefitted from this program. Although there has been an increase in the number of households with telephone service, the Commission noted that more improvements are needed to further expand the participation rate of more low-income households in the Low Income program.³⁹ The Commission highlighted that the participation rate in this program has been low since inception.⁴⁰ According to the most recent estimates issued by the USAC in 2007, only six (6) states had more than 50 percent of eligible low-income households subscribe to the program, while almost half the states had a participation rate of less than 20 percent.⁴¹ In an effort to increase participation in the Low Income program, the Commission has expanded the qualifying criteria several times and adopted broader outreach guidelines to raise awareness of the programs among low-income consumers, so that more low-income households will benefit by obtaining telecommunications service at an affordable rate.⁴² Even though Virgin Mobile was recently granted ETC designation to provide Lifeline program, the Commission nevertheless emphasized that “more can be done to further expand participation by those subscribers that qualify[.]”⁴³

If granted limited ETC designation, i-wireless intends to provide wireless services to low-income consumers who benefit from the Low Income program. The Commission recently

³⁹ *Virgin Mobile Forbearance Order*, FCC 09-18, para. 24.

⁴⁰ *Virgin Mobile Forbearance Order*, FCC 09-18, para 30; *1997 Universal Order*, 12 FCC Rcd at 8875, para. 449.

⁴¹ Information available at: <http://www.usac.org/li/about/participation-rate-information.aspx> (last visited March 9, 2009).

⁴² *Lifeline and Link-Up*, 19 FCC Rcd at 8305, para. 1 and Appendix K at Table 1.B.

⁴³ *Virgin Mobile Forbearance Order*, FCC 09-18, para. 30.

granted to Virgin Mobile forbearance from the facilities requirement in March 2009, only 4 weeks before i-wireless' petition for forbearance was submitted. Both wireless companies offer customers very similar prepaid service plans, and purchase wireless services from Sprint PCS. Therefore, given the similarity in both companies, and close proximity between the *Virgin Mobile Forbearance Order* and i-wireless' Petition for Forbearance, the Commission should be able to rule promptly.

Moreover, the recent economic crisis indicates that more and more eligible consumers will significantly benefit from the Lifeline and Link-Up programs once they become aware of this program. The US Department of Labor recently reported that unemployment has soared to a devastating 10% in some states. Many consumers will be unable to pay for, and therefore lose, their current phone services, and may not get the benefit of any telecommunication service without the benefit of a wireless carrier that can offer an affordable, cost-effective plan at a discounted rate. We therefore urge the Commission to act promptly so that i-wireless may immediately reach out to these consumers who will benefit under the Commission's program.

V. CONCLUSION

As discussed above, i-wireless' request for forbearance satisfies the requirements of section 10(a) of the Act since it seeks forbearance from the facilities requirements for ETC designation only for purposes of participation in the USF's Lifeline and Link-Up programs. By receiving forbearance of the facilities requirement, i-wireless can offer discounted and affordable telecommunications services to low-income customers. Moreover, prompt Commission action will ensure that i-wireless expeditiously deploys its Lifeline and Link-Up services to the many low-income consumers that currently lack access to comparable and affordable telecommunications services.

WHEREFORE, for all of the foregoing reasons, i-wireless respectfully requests that the Commission forbear from applying section 214(e)(1)(A) to its request for designation as an ETC.

Respectfully submitted,

I-WIRELESS, LLC



Eric S. Tresh



Jolie A. Sims

SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street NE
Atlanta, GA 30309
(404) 853-8579

Its Attorneys

March 31, 2009